

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Development of Operational,)
Technical and Spectrum Requirements)
For Meeting Federal, State and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

WT Docket No. 96-86

REPLY COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Southwestern Bell Mobile Systems, Inc., and Pacific Bell Mobile Services (collectively, "SBMS") file these Reply Comments in response to Comments filed in the above-captioned docket, concerning Cellular Priority Access Service ("CPAS"). Parties filing comments showed remarkable unanimity on issues raised by the Federal Communications Commission ("Commission") in its Second Notice of Proposed Rulemaking ("NPRM"), pertaining to the provision of CPAS.

A. The provision of CPAS should be voluntary.

No party that submitted Comments in this proceeding advocated that the Commission should make the provision of CPAS mandatory. Parties commenting on this issue urged that the provision of CPAS by commercial mobile radio service ("CMRS") providers should be voluntary, and offered many good reasons to support this position.

Parties stressed that the voluntary provision of CPAS will be most efficient, flexible, and innovative, permitting providers to respond to market needs. If CPAS is voluntary, carriers will not have to incur the costs of providing CPAS in the absence of demand for it; in areas where the public safety community does desire CPAS, the

carriers and the public safety officials can cooperatively develop the optimal CPAS arrangement to meet public safety needs.¹ Many parties observed that permitting CPAS to be voluntary would reduce the administrative burden in general and, in particular, would alleviate the need for the Commission to deal with the complex issues of mandating a cost recovery mechanism.² CMRS providers should be permitted to develop cost-effective solutions to the needs of public safety entities, and should recover the costs of CPAS from the CPAS users.

Several parties indicated that CPAS is strictly a supplement to public safety communications systems, and the allocation of 24 MHz of spectrum dedicated to public safety use will significantly reduce the need for commercial CPAS.³ These factors reinforce that CPAS should be voluntary rather than mandatory. CMRS providers and public safety officials can evaluate whether CPAS may provide a useful enhancement to the dedicated public safety communications system, and can customize CPAS to meet their needs.

B. CPAS rules should establish standards for the provision of CPAS, which must apply to all CMRS providers.

The parties agreed with the Commission's conclusion that priority access rules should apply to all CMRS providers.⁴ Any other approach would be inconsistent with the achievement of regulatory parity. The Commission should adopt uniform, nationwide standards and criteria for the voluntary provision of CPAS by CMRS providers, including the assignment of priority levels and establishing safeguards against potential abuses.⁵

¹ See Comments of CTIA, pp. 7-11; 360 Degrees Communications Co., pp. 2-3; BellSouth, pp. 5,6.

² See Comments of CTIA, pp. 11-12; 360 Degrees Communications Co., pp. 2-3; BellSouth, p. 5.

³ See Comments of CTIA, pp. 5-6; New York State Police, p. 11; GTE, pp. 4-5; Motorola, p. 23; Association of Public-Safety Communications Officials-International, Inc., p. 20; City of Long Beach, p. 6; BellSouth, p. 4.

⁴ See Comments of CTIA, pp. 15-16, BellSouth, p. 8; GTE, p. 12; National Communications System, p. 6.

⁵ See Comments of GTE, pp. 11, 15-18. GTE indicates that "GETS [the Government Emergency Telecommunications Service] must be able to achieve priority access from all digital and analog phones and

C. Rules governing CPAS must contain explicit limitations on carrier liability.

All parties commenting on this issue concurred that the Commission's rules governing CPAS must limit carrier liability against charges of discrimination under the Communications Act. Several parties suggested that the Commission's proposal to adopt a rule that shifts the burden of proof is insufficient.⁶ These parties contend that the Commission's rules should simply state that a showing by a carrier that it was providing CPAS in compliance with CPAS regulations is an absolute defense to any allegation of liability that may arise from the carrier's provision of CPAS.⁷ SBMS supports this strict limitation of liability, which should apply to complaints by non-priority customers who may have been unable to place a call due to use of available capacity by priority customers.

D. Conclusion.

The parties to this rulemaking concur that CPAS may be a useful supplement to the dedicated public safety system. CMRS providers should be permitted to provide CPAS on a voluntary basis, working with the public safety community to develop a customized priority access service that meets its needs. The Commission should issue rules that set standards for CPAS, such as priority levels and measures to prevent fraudulent use of CPAS, and limit the liability of CPAS providers; these rules should apply to all CMRS carriers.

that this can be done without requiring additional CPAS standards and without requiring modified digital and analog phones." GTE comments, p. 8. While priority access may be achieved from analog phones, it cannot be done in a standard method, and customer confusion may result.

⁶ The Commission proposed that, in the event of a complaint that a CMRS provider engaged in unreasonable discrimination or preference, a sufficient defense will be that the carrier was providing CPAS, and the burden would then be on the complainant to disprove the carrier's showing. (NPRM, para. 200)

⁷ See Comments of Motorola, p. 23; 360 Degrees Communications Co., p. 4; GTE, pp. 12-15.

RESPECTFULLY SUBMITTED,

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